1949

File No. Requisitioned Land (C.S.&P.)/49

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Legal DEPARTMENT

A BRANCH

Subject:—

opinions under the Bombay

Requisitioned Land (Continuance of Powers)

Act, 1947

File No. Requisitioned Land (C.S.&P.) /49.

Std. Sectt. Slip 21 B e.

54-A

CONTENTS

Legal Department File No C. Regn. of Land (C. of P)
1949

Sr. No.	Compilation No	Subject	Pages
1.	O.No. 507 dt. 15-1-49	Bombay Requisitioning Land (C ofP) Act, 1947.- Sec 7(1) Bharucha form at Palaghar Acquisition of Payment of compensation	1-3
2.	O.N. 5815 dt. 24-5-49	Sec. 6(2) Appointment of Arbitrator to determine the compensation of requisitioned lands	5-7
3.	G.R.N.D. No. 6378/5 dt. 17-11-49	Office accomodation- Resident Magistrate, Nasik Road - Reference to arbitration for fixing compensation	8-10

DM
7/12/52
Kjr/1/6
5 Cs.

Office of the R.L.A.

...e requisitioning of Bharucha's leasehold property, which has been continued under the Requisitioned Land (Continuance of Powers) Act, 1947, will expire on 31st March 1949 and if an order is passed under section 7(1) of the Bombay Land Requisition Act, 1948, before 31st March 1949 the property shall further continue subject to requisition. But the power to acquire the leasehold right of Mr. Bharucha under section 5(1) of, the Requisitioned Land (Continuance of Powers) Act, 1947, would be lost if it is not exercised before 31st March 1949.

If the leasehold right of Mr. Bharucha is continued subject to requisition by an order in writing under section 7(1) of, the Bombay Land Requisition Act, 1948, the payment of compensation would be according to the agreement made in relation to the property in respect of the payment of compensation for the period before it was continued to be subject to requisition under sub-section (1) (see the proviso to section 7(2). Consequently the lease of lands at Kelwa and Tokrala to Mr. Bharucha in lieu of compensation payable to him for his leasehold property requisitioned by Government would be considered as proper compensation under the proviso to section 7(2). If, however, Government does not desire to continue that lease of lands at Kelwa and Tokral, Government will have to pay him adquate compensation determined in accordance with the provisions of the Bombay Land Requisition Act and the rules made thereunder. The basis of such compensation would be the annual net profits of the lands which would ordinarily accure to Mr. Bharucha and the rent of the buildings and otherstructure erected thereon.

Sd/- P.M.Lad
14/1

O.C.
Remembrancer of Legal Affair

U.R. to Director of Civil Supplies, No. 507
dated the 15th January 1949.
Mir/31/5 AC.

Under sub-section (2) of section 6 of the Requisitioned Land (Continuance of Powers) Act, 1947 in respect of any acquisition of requisitioned land under this Act or the Ordinance, the amounts of compensation payable shall be such sum as would be sufficient to purchase at the market rate prevailing on the date of the notice under section 5 a piece of land equal in area to, and situated within a distance of three miles from, the acquired land, and suitable for the same use as that to which the acquired land was being put immediately before the date of its requisition, or a sum equivalent to twice the market value of the acquired land on the date of its requisition, whichever is less; and such amount shall be determined and paid in accordance with the procedure set out in the aforesaid section 19 and the rules made thereunder. Sub-section (3) of the said section 6 provides that for the purposes of sub-section (2) such of those provisions as relate to matters of procedure shall be deemed to be continuing in force. Sub-section (1) of section 19 of the Defence of India Act, 1939, which applies to the lands acquired by the Collector of Ahmedabad, provides that "(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement; (b) where no such agreement can be reached the Central Government shall appoint an arbitrator". The powers under section 19 of the Defence of India Act have been delegated to the Provincial Government under Defence Department No 1365-OR/42, dated the 19th September 1942, and are still kept in force under section 6 of the Requisitioned Land (Continuance of Powers) Act, 1947. The Collector who has been empowered under the Government of India War Department (Army Branch) Notification No. 2481-A dated the 28th September 1946,, is therefore the proper officer to carry on negotiations with the owners

of the land for arriving at an agreement without any specific delegation of powers, to that effect. In this negotiation he may consult the Land Acquisition Officer, Ahmedabad, as an expert. But if the negotiations fail the Collector's duty is to inform the Provincial Government who would then appoint an arbitrator as required by clause (b) of sub-section (1) of section 19 of the Defence of India Act, 1939 read with the Defence Department Notification No. 1365-CR/42, dated 19th September 1942. The view taken by the Collector of Ahmedabad, that the compensation will be determined by the Provincial Government is not therefore correct. The Provincial Government's power under the delegation referred to above consists in appointing an arbitrator to determine the compensation. Section 8 of the Act speaks of delegation of powers and duties imposed on the Central Government or the Provincial Government by that Act and not by section 19 of the Defence of India Act and as section 8 of the Act does not contain any power or duty to be exercised or discharged by the Provincial or Central Government the question of delegating the powers to the Collector or the 2nd Special Land Acquisition Officer, Ahmedabad, does not arise. The view taken by the Collector of Ahmedabad, is not correct.

Sd/- J.R.Dhurandhar
24/5

o.c. Additional Secretary to Government

U.R. to R.D., No. 5815, dated the 24th May 1949.

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4 Cs.